

STATE OF MICHIGAN
COURT OF APPEALS

DELTA ENTERPRISES, INC.,

Plaintiff/Counter Defendant-
Appellee,

v

ALPHATECH CONSULTING SERVICES, INC.,
and PRAKASH PATEL,

Defendants/Counter Plaintiffs-
Appellants.

UNPUBLISHED

August 15, 2006

No. 261469

Jackson Circuit Court

LC No. 04-002925-CB

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order denying their motion for relief from default, money judgment, and sanctions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In early 2004, the parties entered into an agreement whereby plaintiff was to buy a gas station and its associated retail business from defendants. By April 2004, plaintiff believed defendants had made misrepresentations concerning the business operations. As a result, plaintiff filed the instant complaint against defendants in the circuit court.

Defendants were initially represented by counsel. But those attorneys withdrew from the case pursuant to a court order dated November 8, 2004. Defendants did not immediately retain substitute counsel. A default was entered against defendants after they failed to appear at the withdrawal hearing and a pre-trial hearing, and after defendant Patel did not appear for his own deposition.

Defendants appeared in pro per at a hearing on December 30, 2004 concerning plaintiff's motion to determine entry of a money judgment following the entry of default. At that hearing, defendants requested time to get legal representation and stated that they disagreed with and did not understand the damage calculations set forth by plaintiff. The court found that plaintiff's damage calculation was reasonable and granted the damages as requested by plaintiff in the amount of \$45,635.38. The court also ordered \$600 in sanctions against defendant Patel for failing to appear at his deposition.

Defendants then hired substitute counsel and filed a motion for relief from the default entry, the money judgment, and the sanctions. The trial court denied defendants' request for relief and determined that it had complied with MCR 2.603 based on its findings and determination following the December 30, 2004 hearing and based on the conduct and presentations of both parties.

On appeal, defendants argue that further evidentiary proceedings or a jury trial should have been allowed on the issue of damages following the entry of default against them.

The decision whether to hold further proceedings on the question of damages following a default is left to the discretion of the trial court. *Wood v DAIIE*, 413 Mich 573, 585; 321 NW2d 653 (1982). Specifically, the Michigan Court Rules provide as follows concerning post-default judgment proceedings:

If, in order for the court to enter a default judgment or to carry it into effect, it is necessary to

- (i) take an account,
- (ii) *determine the amount of damages*,
- (iii) establish the truth of an allegation by evidence, or
- (iv) investigate any other matter,

the court *may* conduct hearings or order references it deems necessary and proper, and shall accord a right of trial by jury to the parties to the extent required by the constitution. [MCR 2.603(B)(3)(b) (emphasis added).]

“An abuse of discretion occurs when an unprejudiced person considering the facts upon which the decision was made would say that there was no justification or excuse for the decision. Discretion is abused when the decision results in ‘an outcome falling outside this principled range of outcomes.’” *City of Novi v Robert Adell Children’s Funded Trust*, 473 Mich 242, 254; 701 NW2d 144 (2005) (internal citations omitted).

In this case, the trial court conducted a post-default hearing on plaintiff’s motion for determination of money judgment on December 30, 2004. That hearing was held more than a month and a half after defendants’ initial counsel withdrew; yet defendants were present at that hearing without the assistance of substitute counsel. At that hearing plaintiff presented a brief and oral argument explaining its calculation of damages. Defendants stated they did not agree with those damages and did not understand plaintiff’s calculations. Defendants did not, however, provide any documentation explaining their own calculation of damages. Neither party requested an evidentiary hearing. As a result, the trial court granted money judgment based on plaintiff’s brief and argument.

Under the circumstances, we hold that the trial court’s decision was justified and did not lead to a result falling outside the principled range of outcomes given that (1) defendants had time to find substitute counsel and were present at the hearing, and (2) only plaintiff provided

specific information concerning the calculation of damages. Accordingly, the trial court did not abuse its discretion in granting the money judgment requested by plaintiff and in denying defendants' request for relief via additional post-default proceedings.

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder